UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1992/18/Add.1
8 January 1992

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-eighth session
Item 10 (c) of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Report of the Working Group on Enforced or Involuntary Disappearances

Addendum

Report on the visit to Sri Lanka by three members of the Working Group on Enforced or Involuntary Disappearances (7-18 October 1991)

GE.92-10049/4111B

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Introduction

1. At the invitation of the Government of Sri Lanka, conveyed in its note verbale dated 15 November 1990 and accepted by the Working Group on 14 December 1990, three members of the Working Group on Enforced or Involuntary Disappearances visited that country from 7 to 17 October 1991. Prior to the visit, the Working Group had been in frequent contact with the Permanent Representative of Sri Lanka to the United Nations. However, the timing of the visit could not be settled between the Working Group and the Government of Sri Lanka until the end of August 1991. The visit was undertaken by Mr. Agha Hilaly, Mr. Jonas Foli and Mr. Toine van Dongen.

2. In submitting this report on its visit, the Working Group, would like to say at the outset that in view of violence on the scale that has prevailed in Sri Lanka, especially during the last 10 years (and unfortunately still prevails in most of the north and much of the east of the country directly affecting almost 2 million people out of a population of 16 million), the Working Group's visit of 12 days was too short and too crowded to enable the group to make a more comprehensive inquiry. This report, therefore, has to be limited to a general survey of the past and the present situation in this much disturbed country. To have attempted more, would have entailed a considerably longer visit with a bigger accompanying staff.

3. The members of the mission were received by the President of the Republic. They were also received by the Ministers for Foreign Affairs, Justice and Home Affairs, the Secretary of Defence, the Presidential Advisor on International Relations, the Attorney-General of the Republic, and by the Chief Justice and other judges of the Supreme Court. They also met numerous parliamentarians of various political parties, the President of the Presidential Task Force and the Officials' Committee on Human Rights, the Secretary and other members of the Presidential Commission of Inquiry into the Involuntary Removal of Persons, the Director of the National Intelligence Bureau, other senior officials of the Executive, including the armed forces and police forces in Colombo and in Batticaloa district, Members of Parliament representing all political parties, and local government officials. In addition, the Working Group conducted interviews in the towns of Hambantota and Tangalle.

4. Given the mandate of the Working Group, the present report is limited to the question of enforced or involuntary disappearances. Chapter I examines the context of violence throughout Sri Lanka in which disappearances have occurred. Chapter II examines the legal and institutional framework relevant to disappearances, both in theoretical terms and in terms of the practical application of the legal procedures as described by the relevant authorities and members of the legal profession. Chapter III describes and evaluates the main elements of the practice of disappearances, noting in detail the characteristics exemplified in the cases presented to the Working Group before and during the visit. It also contains statistical information. Chapter IV discusses positions taken by non-governmental organizations, as well as the circumstances in which they work. Chapter V describes the positions taken by officials of the Government during their meetings with the Working Group. Chapter VI contains conclusions and recommendations. A graph representing the

evolution of the phenomenon of disappearances based on the information provided in the cases so far processed by the Working Group is annexed to the report.

5. The Working Group wishes to emphasize that it received full and valuable cooperation from the Government of Sri Lanka, both in the preparations for and during the visit, in particular from the Ministry of Foreign Affairs and the Presidential Advisor on International Relations, who acted as coordinators for the visit. All requests for meetings with officials were willingly accepted; all the travel plans of the mission were implemented and the logistical arrangements for such travel most efficiently carried out; and no obstacles were encountered by the members of the mission in receiving representatives of non-governmental organizations, witnesses and relatives of missing persons.

6. It should be borne in mind that, as a matter of principle, the Working Group on Enforced or Involuntary Disappearances discharges its mandate in a humanitarian spirit, taking a non-accusatory, non-confrontational approach. The visit to Sri Lanka was approached in the same spirit.

I. CONTEXT OF VIOLENCE

7. The situation of disappearances in Sri Lanka can only be properly evaluated when seen in the context of the violence that has prevailed in various parts of the country since the 1950s. The following paragraphs provide an analysis of the historical, socio-economic and ethnic underpinnings of that context.

8. Currently, Sri Lanka is estimated as having over 16 million inhabitants, of which the Sinhalese comprise 74 per cent and the Tamils 18 per cent. The Moors form a minority with seven per cent. The Tamil population itself is made up of "Ceylon" or "Jaffna" Tamils (69 per cent), with a long history on the island, and the "Indian" or "Estate Tamils" (21 per cent), descendants of labourers brought from southern India under British rule to work on coffee, tea and rubber plantations. In regard to language: Tamils speak Tamil, Sinhalese speak Sinhala and Moors mostly speak Tamil, as the majority of them originally came from the neighbouring Indian State of Tamil Nadu. In terms of religious affiliation, approximately 70 per cent of the population are Buddhist, 15 per cent Hindu, eight per cent Muslim and seven per cent Christian (mostly Roman Catholic). Almost all Sinhalese are Buddhist and almost all Tamils are Hindus; the Moors are Muslim. Buddhism is the religion specifically favoured by the Sri Lankan Constitution.

9. The Sinhalese form the majority except in the former Northern province and the districts of Batticaloa and Kegalle, where the population is predominantly Tamil and in the former Eastern province as a whole, which has almost equal numbers of Tamils, Sinhalese and Muslims. There are Tamil and Muslim communities in all other parts of the country, but they are in the minority there.

10. In 1948, upon independence, those Indian Tamils who did not opt for Sri Lankan citizenship were disenfranchized. Later, in 1964, an agreement was reached whereby India committed itself to take back 575,000 of the Indian Tamils and Sri Lanka to grant citizenship to about 300,000 of them. The

agreement was only partially carried out. Demands by Tamil politicians during the last years of British rule for a system of government which would grant greater autonomy to minority areas were rejected.

11. Racial and religious tension between the Sinhalese and Tamil populations in Sri Lanka has deep historical roots, dating back to the first century A.D. Legend has it that the Sinhala race, of Aryan origin, was founded in the fifth century B.C. by an exiled Buddhist prince from northern India. The Tamils belong to the Dravidian race, which came from southern India in the context of incursions and immigration waves between the first and thirteenth centuries A.D. At the time of the Portuguese conquest in 1621, an independent Tamil kingdom existed in the north.

12. During the present century, ethnic divisiveness grew as a result of tension between Sinhalese and Tamils and between Tamils and Muslims. In the north-east, arbitrary territorial demarcations made by the former colonial rulers exacerbated Tamil-Muslim animosities, compounded by rival claims for water rights and rich arable lands.

13. The most pressing ethnic problems concern the juxtaposition of the Ceylon Tamil and Sinhala populations. Successive Constitutions of Sri Lanka have consistently protected the rights of minorities on the island. Nevertheless, members of the Tamil minority have increasingly felt marginalized and have identified the State with Sinhalese interests and with the orthodox Buddhism practised by the Sinhalese ethnic majority. The Sinhala community, on the other hand, perceives itself as a vulnerable minority in the Indian subcontinent as a whole, particularly vis-à-vis the 50 million Tamils in Tamil Nadu. Sinhalese have considered the Ceylon Tamils as invaders.

14. In addition, for decades, contrasts between the two groups have been accentuated by other factors also. Tamil agricultural lands in the north are less extensive and productive than those of Sinhala farmers in the rest of the country, so that Tamils looked elsewhere for their economic progress. In more recent decades, rivalry has been fuelled by Tamil disenchantment over the allocation of national resources and the government-sponsored settlement of groups of Sinhalese in traditional Tamil homelands. Frustration has arisen, furthermore, over access to higher education and government jobs, the traditional preserve of the Ceylon Tamils before independence.

15. Violence in Sri Lanka has been of three types: communal or ethnic violence, political violence (including terrorism), and violence by security forces. The first major outbreak of communal violence between the Sinhalese and Tamils occurred in 1958, with hundreds of deaths, particularly among Tamils. Similar and increasingly vehement clashes took place in 1977, 1981 and particularly in 1983.

16. In 1976, 20 years after Sinhala had been declared the only official language of Sri Lanka, (replacing English), the first national conference of the Tamil Liberation Front (TULF) passed a resolution calling for a separate Tamil State of Eelam. That step turned out to be of historical significance and had already been predicted by a well-known parliamentarian, warning: "Two languages, one nation; one language, two nations." (In 1983, Sinhala and Tamil started to have equal status.)

17. Although TULF set out to achieve its objectives through democratic means, in 1978 political and terrorist violence erupted through the recently formed Liberation Tigers of Tamil Eelam (LTTE). Armed opposition to the Government was subsequently taken up by other Tamil separatist groups formed in the north of Sri Lanka in the following years. Initially, action was targeted against police in Jaffna, but soon began to take on wider dimensions. Opposition grew, despite attempts on the part of the Government to suppress the armed separatists. In 1978, the Constitution proscribed any form of advocacy of a separate State. After the communal clashes in 1983, an amendment to the Constitution banned any political party advocating secession, a move directed at TULF.

18. By 1983, the armed campaign for an independent Tamil State (to be comprised of the north and north-east of Sri Lanka) had become persistent. In July of that year, Tamil militants escalated their armed fight for independence, killing 13 soldiers in Jaffna district in July. Widespread internecine strife between Sinhalese and Tamils living in southern areas followed. Extremist elements among Sinhalese nationalists in urban areas began to attack the Tamil population in an effort to drive them away, by means of violence, from the south. The Government at the time allegedly did not appear to take effective measures to protect the Tamil civilians and their property nor to prevent repetition of anti-minority violence. Displaced Tamils in the south were sent to the north, increasing pressure on resources in that area, including land, water, food and employment opportunities, and reinforcing separatist sentiments. Many concerned individuals and organizations began to realize the danger of ethnic riots turning into events of more threatening magnitude and intensity.

19. In 1983, the first few cases of disappearance began to be reported. In the years that followed, Tamil separatist violence claimed numerous victims, both among the civilian populations and the security forces, and began to break down the regional infrastructure.

20. In the same period (1983-1987), reports of human rights violations were received, including disappearances, arbitrary arrests, torture and arbitrary executions in the north-east. The Working Group transmitted a total of 861 cases to the Government in regard to those years. During 1984, a large proportion of the cases were said to have taken place in Vavuniya district in the Northern province. From 1985 onwards, an increasing number was reported from the then Eastern province. Violations were generally attributed to government forces. In many of the cases reported from the east, the Special Task Force (STF), a well trained police commando unit (not then falling, as it does now, under the Inspector General of Police) was held responsible by sources for the arbitrary arrests and concomitant violations.

21. A significant and radical change in the Sri Lankan political process occurred in mid-1987, when the Governments of India and Sri Lanka signed an agreement on concerted political and military action with a view to putting an end to the conflict in the north. As a result, the "Indian Peace Keeping Force" (IPKF) landed in Sri Lanka and became responsible not only for disarming the Tamil militants, but also for maintaining law and order in the north and north-east. Nevertheless, several of the armed Tamil groups allied themselves with IPKF and, allegedly, became jointly responsible for many human

rights violations. During this period, human rights organizations reported widespread detentions without charges or trial, torture and extra-judicial executions by IPKF and its Tamil allies. Even though disappearances as such were not a persistent pattern of abuse throughout the IPKF stay in Sri Lanka, the Working Group recorded 42 cases; local human rights groups slightly more. Victims were members and sympathizers of LTTE, which had initially supported the accord, but later withdrew that support and began to fight IPKF.

22. President Premadasa, who came to power in December 1988, had always opposed the Indo-Lanka accord and consequently the presence of foreign troops on Sri Lankan soil. In April 1989, the President undertook negotiations with LTTE, resulting in a mutual cease-fire, while LTTE continued fighting IPKF. It was even alleged that the Sri Lankan Government actually supplied arms to LTTE in order to expedite IPKF withdrawal. In September that year, the Indian Government agreed to pull out its troops. They eventually left the country the year after, in March 1990. Few Tamils had turned in their arms to the Indians, which were used later in opposition activity.

23. In the armed conflict between 1987 and 1990, sources reported that an estimated 10,000 civilians died in the north and north-east of the country. Deaths were attributed to civilians being caught in crossfire, to bombings of cities and towns, to collective and reprisal killings attributed to both IPKF and LTTE, as well as to reprisal killings perpetrated by the latter against rival separatist groups. For its part, IPKF suffered over 1,100 casualties and a further 3,000 injured in an operation estimated to have cost the Government of India nearly one billion United States dollars. LTTE admit to nearly 600 of their cadres being killed.

24. At the same time, an additional source of violence materialized on the island. Amidst extreme Sinhalese nationalist sentiments, reportedly brought on by the presence of foreign troops, the People's Liberation Front (JVP), which had remained underground since 1983, re-emerged to launch a violent revolt against the State. Socio-economic factors exacerbated the uprising. JVP had started as a non-violent political movement in the early 1970s, seeking to participate in the established democratic system. The movement was suppressed by the Government of the day. It regrouped in the early 1980s, this time resorting to violence. The movement acquired popular support when the socio-economic problems it sought to address, such as unemployment, inflation and improvement of the prevailing system of land ownership, remained unresolved. Violence had subsequently escalated in the course of repeated armed confrontations with the government forces.

25. In the years after 1987, therefore, Sri Lanka remained caught up in a war on two fronts: ethnic conflict in the north, and political confrontation between JVP and the armed forces, in the south.

26. Both JVP and the security forces resorted to the use of extreme violence in this contest for State power. JVP, and its military wing, the Patriotic People's Front (DJV) launched a campaign of murder in early 1988, intended to annihilate those described as "traitors to the motherland" and "enemies of the nation". Particularly targeted for punishment by death by JVP cadres were the

members and activists of the ruling United National Party (UNP) and of the leftist parties, and government employees. In 1988 alone, the Government held JVP accountable for over 700 politically motivated killings.

27. In mid-1988, the Government launched a strong counter-offensive by arresting and killing JVP rebels. Both sides adopted a tactic of "exemplary killing" as a means of instilling terror in the civilian population. Mutilated bodies placed at roadsides or in market places were a regular sight in many parts of the south in the years 1988 and 1989. Hundreds of bodies were seen burning on tyres or washed up on the shore.

28. The conflict in the south took a particularly violent turn after July 1989 when JVP appeared to make a final thrust towards capturing State power. Its tactics included enforced work stoppages, intimidation and assassination. In addition, for the first time ever, to the consternation of the police and the army, JVP started attacking and killing their families, whether living locally or hundreds of kilometres away. To thwart the JVP military offensive, the State launched a generalized counter-insurgency campaign. The armed forces and the police appear to have been given a wide latitude of action to eliminate the rebel movement and restore law and order in any way they saw fit. Security forces were ordered to shoot curfew violators and demonstrators on sight. Some alleged that anyone suspected of being a subversive was often arrested and shot summarily. Emergency regulations allowed for the disposal of bodies without the post-mortem inquest or confirmation of identity required in ordinary circumstances.

29. Reports indicate that in the autumn of 1988 the security forces used their new powers liberally as political violence intensified during the presidential election campaign. JVP had boycotted the elections. As people went to the polls amid widespread JVP intimidation, security forces were reportedly ordered to use maximum force to ensure unhindered access to polling stations.

30. By the end of November 1989, the armed forces put down the revolt when they succeeded in capturing and executing the nucleus of the JVP leadership, after the killing of hundreds of members of the political opposition had been attributed to it. Conservative estimates put the number of deaths during this period of violence at over 40,000. For the same period, the Working Group has to date recorded over 2,700 cases of disappearance.

31. An important new feature in combating the JVP uprising was the proliferation of death squads whose main task was to kill suspected rebels and sympathizers. After resumption of the fighting in the north, similar paramilitary and vigilante units would become operational there (the "Black Cobra" being especially notorious), engaging in fearsome forms of exemplary killing. As in the south, they would operate in plain clothes and move about freely in unmarked vehicles, passing roadblocks unhindered. Such groups are widely believed to consist of members of the security forces, but this is denied by the Government.

32. As the south was being pacified, hostilities in the north resumed. Even as IPKF withdrew, heavy fighting was reported between LTTE and the Tamil National Army (TNA), a combat unit forcibly recruited by Tamil factions with

the help of the Indian forces. Hundreds of persons were reported killed and thousands of Tamils fled to India and other countries. LTTE took effective control in the north-east after the retreat of the Indian army.

33. In September 1990, an all-party conference was convened on the issue of devolution of power in the north-east with the intention of resolving the ethnic conflict. Initially, a total of 18 political parties took part, but some shortly withdrew. Charges were made that since the main opposition parties were not participating, the conference could not be effective. LTTE ultimately attended as an observer; JVP refused to take part. After much negotiation, the conference failed to reach agreement between the Tamil and Muslim groups regarding equal status and power as well as the merging of the north and east (although the north and east were merged into one province). Throughout his term of office, President Premadasa has advocated the solution of the ethnic conflict through consultation, consensus and compromise. At present overtures are being made to bring the parties concerned to the negotiating table.

34. On 10 June 1990, LTTE, breaking a 14-month cease-fire, occupied Batticaloa police station. The next day, the Tigers ordered police officers in the east to vacate all police stations. A government attempt to negotiate a last-minute cease-fire failed. Attacks on police stations and army camps throughout the north-east continued. The Government responded by redeploying troops from the south to the North-eastern province. In August 1991, the army carried out Operation Balavegaya, with the entry of troops into the besieged Elephant Pass army camp. Official sources reported 162 servicemen killed in the attack, while over 2,000 LTTE casualties were recorded. The battle for the north continues to this day.

35. The Muslim communities in the North-eastern province are severely affected. The Working Group visited one Muslim community which is constantly being besieged by LTTE. Unable to till their lands and surrounded by army outposts for their protection, the inhabitants of the town of Valtruniya are entirely dependent on food transports. Muslim Home Guards act as a civil defence unit; they are armed and trained by the Sri Lankan army and often act jointly with them against LTTE cadres, a form of cooperation which has provoked retaliatory action by the Tamil insurgents. Many Muslims have fallen victim to surprise attacks. Over 300 members of the community have been abducted to date. Two particularly horrifying events took place in 1990 when LTTE, in separate incidents, indiscriminately fired upon and killed approximately 100 Muslims in two mosques, while the victims were at prayer.

36. LTTE has also consistently carried out arbitrary execution-style killings of hundreds of civilians, including large numbers of Sinhalese and "dissident" Tamils. The insurgents are also responsible for many cases of abduction and torture of prisoners, including policemen and other government officials. Since June 1990, over 700 policemen have been killed in Batticaloa district alone. The overall number of troops killed since June 1990 stands at over 1,400, with over 600 still reported missing.

37. In June 1990, after the departure of the Indian troops, the Sri Lanka army came back to the north, publicly vowing that the same strategy was going to be applied against LTTE as had been used to put an end to JVP terror in the

south. Even though the Government repeatedly stated that the military action was intended to destroy LTTE alone and was not directed against the Tamil population of the north-east as a whole, the then Minister of State for Defence (since assassinated) announced an all-out war. A fierce counter-insurgency campaign ensued, reported to have led to mass killings and arrests, large-scale round-ups of non-combatant civilians and an almost total breakdown of civil administration. It is estimated that between June and September 1990, more than one million people were displaced by the fighting in the north-east. As of January 1991, over 210,000 had fled to southern India and more than 5,400 had been killed. Since the resumption of hostilities in June 1990, the Working Group has recorded over 2,000 cases of disappearance (see chapter III) from that area.

38. Displacement of the civilian population has been a major consequence of the violence throughout Sri Lanka, particularly in the north. The Ministry of Reconstruction, Rehabilitation and Social Welfare recently issued its latest figures with regard to displaced persons. According to the Ministry, there are three categories: displaced persons living in welfare centres (253,937 in August 1991); displaced persons living outside welfare centres but drawing dry rations (419,748); and economically affected persons (1,090,961). Those who live in "refugee" camps form a particularly vulnerable group, and there have been many reports of threats and attacks by government forces placed there to protect them. Many cases of disappearance have been recorded by the Working Group regarding inhabitants of such camps (see chapter III). Furthermore, it is estimated that 100,000 persons are still in southern India. For others, the extensive damage to housing is causing serious hardship.

39. As a consequence of the conflict, thousands of women throughout the country have been widowed, and are now the only provider for their family. Children form another category of victims, many having lost one or both parents. In Batticaloa district alone, estimates indicate that there are about 10,000 orphans.

40. There is no doubt that Sri Lanka, owing to the continuation of the ethnic and civil war, is, even today, a country facing serious challenges to its democratically elected Government and to its society.

II. LEGAL AND INSTITUTIONAL INFORMATION RELEVANT TO THE QUESTION OF DISAPPEARANCES

A. Presidential powers in the Constitution of Sri Lanka

41. The Constitution of Sri Lanka has established a system composed of the Executive Power, the Legislative Power and the Judicial Power, in which the President is the Head of State, the Head of the Executive and of the Government and the Commander in Chief of the Armed Forces. The President has the power, under the Constitution, to appoint all public officers required by the Constitution or other written law to be appointed by the President, including the Chief Justice, the President of the Court of Appeal and every other judge of the Supreme Court and the Court of Appeal, the Attorney-General, the Head of the Army, the Navy, the Air Force and the Police Force (articles 54 and 107) and to make regulations bypassing the normal

legislative process (Public Security Ordinance, incorporated into the 1978 Constitution) if a state of emergency is declared. Under a state of emergency, the presidential powers are further increased by such regulations and by the appointment, at the President's discretion, of any person as a "competent authority" for the purposes of any emergency regulation for the entire country or for any specified area or place (regulations made by the President under section 5, chapter 40 of the Public Security Ordinance of 20 June 1989). The above-mentioned competent authorities have the right to detain, without warrant, and to interrogate persons, to enter and search premises, places, vehicles or vessels and to seize, remove or detain vehicles, vessels, substances or whatever things used in or in connection with the commission of an offence (see sections C and D of this chapter).

42. Upon the declaration of an emergency in a province, the President may assume the powers and responsibilities of the provincial authorities in respect of public order in that province.

B. Human rights recognized in the Constitution and constitutional safeguards

43. The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978, in its chapters III and IV, guarantees to the people of that country a number of fundamental human rights, such as freedom of thought, conscience and religion, the right to equality, the right not to be subjected to torture or to arbitrary arrest and detention, freedom of association and to form and join a trade union, freedom of movement and of choosing their place of residence in Sri Lanka and to leave and return to Sri Lanka, and freedom of speech and expression.

44. Article 13.1 of the Constitution establishes that "No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest". In accordance with article 13.2 and 3, every person deprived of liberty shall be brought before a judge and, when charged with an offence, shall be entitled to be heard, in person or as represented by an attorney-at-law, at a fair trial by a competent court.

45. With regard to derogations, article 15.7 of the Constitution establishes:

> "the exercise and operation of all fundamental rights declared and recognized by articles 12 (right to equality and non-discrimination), 13.1 and 2, and article 14 (freedoms of expression, association, movement and peaceful assembly), shall be subject to such restrictions as may be prescribed by law in the interest of national security, public order and the protection of public health or morality. For the purpose of this paragraph law includes regulations made under the law for the time being relating to public security".

46. In relation to safeguards and remedies, article 118 provides that the Supreme Court of the Republic of Sri Lanka shall be the highest and final superior court of record in the Republic and shall, subject to the provisions of the Constitution, exercise (a) jurisdiction in respect of constitutional matters and (b) jurisdiction for the protection of fundamental rights.

47. In accordance with article 126, any person alleging that any fundamental right declared and recognized by chapter III or chapter IV of the Constitution relating to such person has been infringed or is about to be infringed by State action, he himself or an attorney-at-law on his behalf, may, within four months thereof, apply to the Supreme Court by way of a written petition addressed to such Court for relief or redress in respect of such infringement. In addition, when in the course of hearings in the Court of Appeal into an application for orders in the nature of a writ of habeas corpus, it appears to such Court that there is prima facie evidence of an infringement of the provisions of chapter III or chapter IV by a party to such application, the Court shall refer the matter for determination by the Supreme Court. The Supreme Court has the power to grant or refuse such relief or redress.

48. Article 141 of the Constitution establishes that the Court of Appeal may grant and issue orders in the nature of writs of habeas corpus to bring before such Court (a) the body of any person to be dealt with according to law, or (b) the body of any person illegally or improperly detained in public or private custody; and to discharge or remand any person so brought up or otherwise deal with such person according to law. The remedy of habeas corpus is available to any person who petitions the Court of Appeal that a relative has been abducted or is being illegally detained.

49. In connection with both mechanisms (fundamental rights petitions and habeas corpus), the members of the mission sought information from governmental and non-governmental sources. Relatives of missing persons and local authorities concerned said that neither safeguard was available locally, but petitions and writs had to be filed before the Supreme Court or the Court of Appeal in Colombo. The lack of remedies at the local level was considered an important element discouraging relatives or other persons who wished to complain about human rights violations. However, recent judicial decisions admitted the filing of petitions and writs alleging violations of human rights by mail.

50. Non-governmental sources indicated that fundamental rights petitions alleging violations of human rights were not applicable in cases of disappearance because only the victim of a human rights violation could apply; and clearly it was not possible for a missing person to present a petition on his own behalf. They explained that habeas corpus was the appropriate mechanism in cases of disappearance, since writs could be submitted by the relatives.

51. Governmental sources, on the other hand, stated that both remedies were available in cases of disappearance, but the fundamental rights petition was more effective because it went directly to the Supreme Court. The Chief Justice and members of the Supreme Court who met members of the mission during the visit indicated that, in the past, only petitions made by the victim or by an attorney retained by the victim had been admitted but, recently, the Supreme Court had allowed petitions made by relatives on behalf of the victim. Rules issued by the Supreme Court on 9 August 1990 for application under article 126 of the Constitution establish that whenever, for any reason, a person whose fundamental rights have been infringed is unable to sign a proxy appointing an attorney-at-law to act on his behalf, any other person

authorized by him (whether orally or in any other manner, and whether directly or indirectly), may sign such proxy on his behalf. Regarding these two safeguards, the Minister of Justice stated that one did not exclude the other, so that a fundamental rights petition could be made in addition to an application for habeas corpus.

52. With reference to the effectiveness of both the above safeguards in cases of disappearance, lawyers and non-governmental organizations informed the Working Group that since the fundamental rights petition had not been available to relatives in the past, a very limited number of such petitions had been submitted in cases of disappearance during the previous months. Many habeas corpus writs had been filed instead and had given no results. On a few occasions only detention in custody had been admitted after the filing of a habeas corpus writ, although the detention had been denied earlier to relatives. In other instances, the petitioners had been perhaps discouraged from pursuing the application as a result of the initial denial, or as a result of events supervening thereafter (for example, threats to petitioners or threats to lawyers followed by their emigration). Many cases might be technically still pending. In terms of procedure, it was explained that when the arrest was denied, the Court of Appeal could refer the matter for inquiry to a magistrate. If the magistrate found as a fact that the missing person had been taken into custody by State forces, then he would report accordingly to the Court of Appeal. The question at issue was which of the two versions was accepted by the magistrate: that of the petitioner and/or witnesses to the abduction or detention, on the one hand, or that of the State officers, on the other hand. In the great majority of cases of disappearance, the version of the State forces had been accepted, so that habeas corpus petitions had not been an effective remedy in such cases. Only in a few cases had the magistrate accepted the version of the petitioners. In one of them, the Amanda Sunil case, the counsel representing the Attorney-General had attempted to persuade the Court that once the detention was denied the proceedings should end, but his argument had not been upheld by the Court, which had referred the case to the Chief Magistrate of Colombo for inquiry.

53. Another important case in which a full investigation had been carried out by the competent authorities was that of the lawyer Wijedesa Liyanaratchi. This case was initially a disappearance, Liyanaratchi having been abducted in Colombo and taken to another district by police officers attached to the police station of that area. Later, the arrest was acknowledged. Liyanaratchi died of injuries sustained while in custody. In this case the Court of Appeals stated:

> "The proceedings before this trial at Bar have shed considerable light on revelations leading to the death of W. Liyanaratchi and the posterior illegal activity. It is the fervent hope of this Court that the Honourable Attorney-General, the law enforcement agencies and the Executive will, in the near future, probe and investigate into the issue as to who caused this death, using the varied facts, matters and information disclosed in these court proceedings."

54. This judgement was delivered on 18 March 1991. However, the police officer concerned, now in Colombo, reportedly continues to hold high office in the police force, and no action appears to have been taken by the authorities in pursuance of the above judgement.

C. The Prevention of Terrorism Act

55. The Prevention of Terrorism Act was first enacted as a temporary law, but became a permanent law by Act No.10 of 1982. The operation of the provisions of the Act does not depend on the existence of a state of emergency. The Act makes punishable a broad range of activities deemed to be "terrorist" or "subversive", including non-violent advocacy of secession.

56. Act No. 48 of 1979, as amended by Act No. 10 of 1982 and Act No. 22 of 1988, provides that any police officer not below the rank of superintendent, or not below the rank of sub-inspector, if authorized in writing by the former, may, without a warrant, arrest any person, enter and search any premises, stop and search any individual or any vehicle, vessel, train or aircraft, and seize any document or thing connected with or concerned in, or reasonably suspected of being connected with or concerned in, any offence under that Act. The person so arrested shall be produced before a magistrate within the next 72 hours and the magistrate, on an application made in writing by a police officer not below the rank of superintendent, shall make the order that such person be remanded until the conclusion of the trial. Magistrates cannot review the grounds for arrest or order the release of detainees. Furthermore, the person cannot be released pending trial or indictment in the High Court.

57. During the detention, any police officer has the right to remove the person from the place of detention for the purpose of interrogation or take him from place to place for the purpose of investigation.

58. Persons detained under the Act may be denied access to family members and lawyers. Confessions made to a police officer above the rank of assistant superintendent are permissible as evidence in court. The Minister of Defence may order that the person continue in detention for a period of three months. This period can subsequently be extended up to 18 months, "in such place and subject to such conditions as may be determined by the Minister".

59. An order issued by the Minister regarding the detention is final and cannot be called into question in any court or tribunal by way of a writ or otherwise. Every person under trial for offences under the Act, or convicted by any court of any such offence, can be transferred to any place of detention or kept in the custody of any authority as decided by the Secretary of the Ministry of Defence. The order of this authority must be communicated to the High Court and to the Commissioner of Prisons.

D. Emergency regulations

60. Sri Lanka has been under a state of emergency since 1983. However, the state of emergency was lifted from January to June 1989 and for a short period in February 1990, during elections. Emergency regulations are made by the President under the Public Security Ordinance, bypassing the normal legislative process through the Parliament, and come into effect as soon as they are made. The Public Security Ordinance provides for the making of emergency regulations where

> "in view of the existence or imminence of a state of public emergency, the President is of the opinion that it is expedient so to do in the

interest of public security and the preservation of public order or for the maintenance of supplies and services essential to the life of the community".

61. The existence of a state of emergency cannot be called into question in any court. The proclamation declaring the state of emergency may come into effect immediately, although there is provision for it to be approved by Parliament.

62. The proclamation is in force for one month only, but a fresh proclamation can always be made, so that emergency rule can be prolonged indefinitely. Upon declaration of an emergency, a set of regulations called the Emergency (Miscellaneous Provisions and Powers) Regulations is made. There is also provision for the emergency regulations to override existing laws. However, they cannot override the norms of the Constitution.

63. In this respect, the Working Group asked members of the Supreme Court about the faculties of the Supreme Court to examine the constitutionality of the laws. The justices explained that before a law passes, the draft is sent to the Supreme Court for constitutional examination and that all emergency legislation had passed the above test.

64. The members of the Working Group received a copy of the emergency regulations promulgated on 26 June 1989 (which continue in force except for certain provisions), as well as of those existing at present after the repeal of certain regulations. Such regulations cover a wide range of matters, including the granting of powers of arrest, preventive detention, search, requisition of property and personal services, and the control of meetings, publications and fire arms, etc.

65. For the purpose of this report, the regulations concerning arrest and detention are particularly relevant. Under the Emergency (Miscellaneous Provisions and Powers) Regulations, there are two types of detention: (a) preventive detention under Regulation 17 and (b) arrest under Regulation 18.

66. Regulation 17 empowers the Secretary to the Ministry of Defence to issue a detention order on a person where he is satisfied, on the basis of material submitted to him, that it is necessary for him to do so to prevent the person acting in a manner prejudicial to national security or public order. In other words, the detainee is held not for anything he has done, but for what it is anticipated he might do if left at liberty. Any police officer or member of the army, navy or air force may carry into effect a detention order and may use such force as may be necessary for the purpose (Regulation 17.2). There is no time limit to such detention, other than the fact that it can continue only so long as the emergency is in force. A person detained by order made under Regulation 17 may be held "in such place as may be authorized by the Inspector General of Police". Where such person is held in prison, Inspector General of Police may alter or amend the provisions of the Prisons Ordinance in relation to such person (Regulation 17.3), for example, restrict visits and correspondence of the detainee at his discretion.

67. Regulation 18 provides for arrest without warrant of any person for an offence under any emergency regulation. The arrest may be effected by any police officer, any member of the army, navy or air force, or any other person authorized by the President. Persons arrested under Regulation 18 are excluded from the operation of sections 36, 37 and 38 of the Code of Criminal Procedure Act. These relate to bail and being produced before a magistrate within 24 hours. Where produced before a magistrate, a person arrested under Regulation 18 may not be released on bail except with the prior written consent of the Attorney-General (Regulation 19.1A). According to the law, the magistrate of the area shall visit each place of detention not less than once a month and persons detained otherwise than by the order of a magistrate shall be produced before such visiting magistrate (Regulation 19.1A). A person arrested under this provision may be held for up to 90 days in a place authorized by the Inspector General of Police (this may be in police custody). At the end of such period he shall be released unless he is produced before a court (Regulation 19.2). Where a person arrested under Regulation 18 is produced before a court, the court must order him to be remanded, it has no option to release him. As in the case of detention under Regulation 17, there is provision for the Prisons Ordinance to be made inapplicable if the place of detention is a prison. The Prison Ordinance contains provisions assuring contact with relatives and the external world, as well as guarantees for the humanitarian treatment of persons under detention. The term "Inspector General of Police" is given a specially wide interpretation in these regulations. Regulation 2 provides that the term shall include any deputy inspector general of police. Regulation 19.4 provides that the term shall, for the purposes of that Regulation, also apply to any superintendent or assistant superintendent of police.

68. According to information received, quite often an order of detention under Regulation 17 is issued subsequent to arrest under Regulation 18, or arrest or detention under the Prevention of Terrorism Act. Thus, the maximum period of 18 months provided for a detention order can be supplemented by a detention order under Regulation 17.

69. Regulation 60 establishes that confessions made while in custody before an officer not below the rank of assistant superintendent of police, by a person charged with an offence under an emergency regulation, as well as any statement incriminating other persons jointly charged with such offence, may be used against such persons at the trial (under the normal law such confessions are not admissible). It was intimated to the members of the Working Group that this Regulation should be read in connection with those determining long periods of detention under the Emergency Regulations which, under harsh prison conditions, may induce a person to "confess" to a crime not committed by him.

70. Regulation 55 FF, which was promulgated in July 1988, amended on 9 November 1988 and repealed on 15 February 1990, permitted the disposal of dead bodies without post-mortem or inquest, by police officers with the rank of assistant superintendent of police or above, or any other officer or person authorized by him in that respect. These officers or authorized persons could take all the necessary measures for burial or cremation and also determine, at their discretion, the persons who could be present at any

such burial or cremation. This regulation is relevant to the allegation that many of the missing persons could have been killed and their bodies disposed of by the police or the armed forces.

71. While Regulation 55 FF has been repealed, under Regulation 55 A to F, still in force, deaths that take place in police or military custody and deaths caused by the security forces in action in the course of duty or resulting from such action are not subject to a mandatory inquest held by a magistrate as required by the Code of Criminal Procedure. The mandatory inquest is supplanted by another procedure which does not have to include a judicial inquiry. The Inspector General of Police may, at his discretion, refer the matter to an inquiry by the High Court. This inquiry is, according to information received, different from and less satisfactory than the inquest under normal law.

72. It was alleged that the fact that the investigation of death in custody was left to the discretion of the Inspector General of Police deprived detainees of an important safeguard aimed at protecting persons in custody and was also an element favouring impunity for those responsible for disappearances.

E. The Indemnity (Amendment) Act

73. Act. No. 20 of 1982 provided indemnity for actions done during August 1977. On 7 December 1988, it was amended by the Sri Lanka Parliament in order to extend the period of application of the indemnity from 1 August 1977 to 11 December 1988.

74. The Act establishes that no action (civil or criminal proceedings) be instituted in any court of law, in respect of the persons specified, provided their acts were done "in good faith". Persons covered by such indemnity are members of the security forces, members of the Government and government officials involved in enforcing law and order, as well as persons who can use the indemnity to their defence by stating that they acted "in good faith" under the authority of a government official. The law also states that if any legal proceedings regarding such acts have been instituted in any court of law, before or after the law came into force, such legal proceedings shall be null and void.

75. It was reported to the Working Group that, when the Indemnity (Amendment) Act was put before the Supreme Court for examination of whether it conflicted with the Constitution, a member of the Court said that the burden of proof would be upon the accused person pleading that he acted in "good faith" and that he would enjoy the protection of this legislation. It was also reported that the Act had already been used by the State to claim immunity from civil claims for compensation filed by relatives of two Tamil prisoners who had been killed by Sinhalese prisoners.

F. Law-enforcement forces and other groups involved in arrests

76. It is not possible to indicate in the present report all the persons or competent authorities empowered to arrest, detain, interrogate or transfer detainees. However, certain forces have been mentioned among those that enjoy

such powers and repeatedly reported as having been involved in disappearances. Among those frequently mentioned are the armed forces and investigative and intelligence units of the army. These forces operate under a national command; they are placed, according to the situation, in different areas of the country. The commanders of the armed forces (army, navy and air force) are under the Minister of Defence. The police force is autonomous of the armed forces, but also comes under the Minister of Defence.

77. The police force and its different units have also been mentioned in relation to many cases of disappearance. The police force, which is headed by the Inspector General of Police has a national division (including special units) and a provincial division for each province. A deputy inspector general is the head of the provincial division. He is appointed by the Inspector General with the concurrence of the Chief Minister of the province. According to the Sri Lankan Code of Criminal Procedure, there are "police officers" (members of the established police force, including police reservists), and "peace officers" (police and grama seva miladharis appointed by a government agent in writing to perform police duties).

78. The police force has, in addition, the following divisions: (a) the Criminal Investigation Department, which is in charge of investigating complex or sensitive crime, systematic fraud, cases of national interest and involving police and armed services personnel, and terrorist activities (particularly across borders), and also of providing assistance to local and foreign police and of cases in which coordination with Interpol and other international agencies is needed; (b) the Security Coordinating Division, which is charged with the collection of intelligence on subversive activities, including assistance to the senior superintendents of police divisions, and with the coordination of all matters of security significance within the Police Department and with agencies engaged in such work outside it, such as the Ministry of Defence, Military Intelligence, etc.; (c) the Bureau of Special Operations, which is mainly concerned with drug trafficking, contraband, vice and illegal arms and ammunitions; (d) the National Intelligence Bureau, which collects and communicates information affecting national security; and (e) the Special Investigation Unit, which is mainly concerned with internal reviews, including investigations into misconduct and disciplinary lapses of police officers, that cannot be undertaken at the division level. Some of these divisions exist only at the national level, but can also operate, under certain circumstances, in cases or inquiries falling under provincial jurisdiction. Others have provincial or local branches operating under the deputy inspector general of the province.

79. There are also a number of civil defence groups (also referred to as "vigilante groups") operating under military or police control, such as the "Home Guards" (Muslim groups operating in the north and east of the country); the People's Liberation Organization of Tamil Ealam (PLOTE), the Tamil Ealam Liberation Organization (TELO) and other groups currently existing as "auxiliary forces" in the northern provinces. They are now coordinated by a military officer. However, in the past, there were "free vigilante groups" and several paramilitary groups in the south, operating under the orders of local politicians or military and police officers. In the south, during the period 1988-1990, they were said to have been authorized to make arrests and transfer detainees, although this information was not confirmed by government

officials. Paramilitary and civil defence groups provided support for military and police activities, including "intelligence" for the anti-subversive operation.

80. Government officials said that civil defence groups were possibly responsible for a large number of disappearances and that paramilitary groups established or supported by local civil, police or military authorities had existed during the period between late 1987 and late 1989, outside the authorities' control. These groups were closely connected with military and police personnel and had the possibility of using equipment and premises of the armed and police forces. They also had power to arrest, but they were supposed to hand over persons so arrested to police or military officers.

81. The large number of persons and institutions authorized to detain, interrogate and transfer detainees makes it very difficult to trace the whereabouts of missing persons and to identify the persons or institutions responsible unless full cooperation is obtained from the different offices and branches of the police or armed forces. If such cooperation is refused and information is denied to the investigator, it seems to be very difficult to establish the whereabouts of a detainee who has been transferred several times to different police or military divisions (see paras. 136-139 below). During meetings with government officials, the Working Group was informed that some of the missing detainees could not be traced because of numerous transfers.

G. Institutions established by the Government to deal with disappearances and other human rights violations

1. The Officials' Committee on Human Rights (formerly the Presidential Task Force on Human Rights)

82. According to information received from governmental sources, this Official Committee has been appointed by the President to monitor and report on human rights violations. It was established on 30 November 1990 and consists of eight members, including a member of Parliament, a member of the police, high-ranking officials from three ministries, a presidential adviser, an additional solicitor-general and a consultant for media and information. The objectives of the Committee are: (a) to formulate and implement a strategy to meet charges of human rights violations made worldwide; (b) to coordinate the responses which the Sri Lankan Government makes to such charges; (c) to collate necessary data to deal with allegations; (d) to assist in expediting court and departmental disciplinary action taken against State officers charged with "excesses".

83. According to the information obtained from one member of the Committee, this is an unofficial group created to take into consideration the views of the international community in relation to human rights matters. It holds meetings with donor countries which have indicated to the Sri Lankan authorities that their aid will be affected if the human rights situation is not alleviated. It maintains contacts with national and international non-governmental organizations concerned with human rights. This allows the Committee to alert government officials about the actual situation of human

rights in the country. The Committee also follows up on the Attorney-General's handling of cases and other court procedures in relation to its objective of monitoring trials concerning "excesses".

2. Human Rights Task Force

84. The Human Rights Task Force was set up as of 23 August 1991 by the Monitoring of Fundamental Rights of Detainees Regulation 1991. Its members are appointed by the President of Sri Lanka for a period of three years. It has powers equivalent to those of a presidential commission.

85. The function of the Task Force is to monitor observance of the fundamental rights of persons detained in custody otherwise than by a judicial order. This includes maintaining a comprehensive and accurate list of persons so detained, establishing the proper identity of each such person, monitoring the welfare of such persons and recording complaints and representations made by them. There is no provision in the regulation setting up the Task Force, that compels arresting authorities to report immediately to the Task Force all arrests, transfers and releases of detainees.

86. While the welfare and protection of detainees would appear to be the main function of the Task Force, its obligation to prepare a full and comprehensive list of all detainees makes it significant in dealing with the problem of disappearances, as one of the factors facilitating disappearances may be the lack of proper mechanisms for recording detentions as they take place and of a central directory of detainees.

87. Since its establishment, the Task Force has begun recording lists of detainees in some jails and detention centres. Its investigating officers have visited detention camps, interviewed detainees and obtained details of names, parents' names, addresses, etc. The details gathered are expected to be entered into a central computerized list. If given the name of a disappeared person, the Task Force can check whether that name is in the records it has compiled so far.

88. At a meeting with the members of the Working Group during its visit to Sri Lanka, the Task Force provided a list of visits made to different detention and rehabilitation camps, including the number of detainees in each camp and the number of persons interviewed who had filled in the relevant forms. The Task Force has 1,700 names of detainees currently on its lists and has visited 19 camps with a total population of 6,720 detainees. It was explained to the Working Group that the Task Force's mechanism involved a lot of work, because names recorded in the camps' lists contained many mistakes that could lead to erroneous identification of detainees and, consequently, it was necessary to interview the detainees in order to find out their real names and other identity data. Seven people who appeared in the lists of missing persons had been found in the camps' records. However, they had been transferred in the meantime, and the Task Force had been unable to trace them after their transfer from the camp, although transfers were said normally to be recorded. Members of the Task Force also explained that they had never visited police stations or detention centres run by the police (detention centres visited by them are under the administration of the army) because they had never received complaints concerning political detainees in police

stations. Furthermore, they explained that they did not maintain records of persons temporarily detained at interrogation centres or other temporary places of detention (often called "outposts").

3. Presidential Commission of Inquiry into Involuntary Removal of Persons

89. This Commission was established by the President for a 12-month period to inquire into and report on allegations concerning persons whose whereabouts are not known. It consists of five members, four of whom are retired judges of the Superior Courts. Its mandate is limited to persons who allegedly disappeared after 11 January 1991, the day on which the regulation establishing the Commission was promulgated. The members of the Working Group met this Presidential Commission and were informed that it had received 2,344 reports of disappearances, but that most of them did not fall within its mandate because they had occurred before 11 January 1991. Only 185 cases fell within the Commission's mandate; 136 had so far been handed over to the Chief Investigating Officer. In 26 of those cases, the whereabouts of the person at a certain point in time had been established when his/her name had been found recorded in the lists of a detention centre or a police station. In 17 of the 26 cases, the detention of the person had been confirmed by the police, while in the remaining two cases the person had been transferred and his whereabouts were unknown. In one of the 17 cases in which the person was located, it was determined that he had died while in police custody. This case, and a second one in which the person was never located, were investigated in a public inquiry; the first one was currently pending in the High Court and the second one had been disposed of.

90. A public inquiry was made when information regarding the persons responsible for a disappearance was available. After the inquiry, the Commission could make a recommendation to the President, who decided, at his discretion, if the case should be sent to the Attorney-General. The Attorney-General had the legal power to send the case to the courts for further investigation and trial.

91. When a person was located, the Commission informed the relatives but did not follow up the case. The Commission, in fact, did not follow up the case if the person had been transferred, so that it could not ascertain whether he had finally been found by his relatives; and there were several cases in which the information received by the police indicated that the person had escaped.

92. The members of the Commission informed the Working Group that they were empowered to investigate cases up to a certain point; this included the right to go into police stations or army barracks (they had to seek access through a liaison officer of the police or the army in each area), the right to look into the records of detainees and the right to summon any civil, military or police official and to receive from him a sworn statement.

93. The territorial competence of the Commission covered the entire country. However, it had limited resources and no personnel in the provinces. Persons who wanted to avail themselves of this mechanism were supposed to contact the Commission by letter. Therefore, it was quite possible that many in the various provinces of the country were unaware of its existence. Members of

the Commission stated that they received any family of missing persons who wished to report a case of disappearance. However, several sources indicated that people and groups found it difficult to reach the Commission.

94. The Commission was currently investigating 109 cases, but its members were concerned about the time involved in the procedure and thought that it would be necessary to extend the period of their mandate to deal with the number of cases, as of January 1991, in the various provinces.

III. DISAPPEARANCES IN SRI LANKA

95. Since the establishment of the Working Group in 1980, 4,932 cases of disappearance alleged to have occurred in Sri Lanka have been reported by non-governmental sources to the Working Group and transmitted to the Government of Sri Lanka.

96. For the Southern and Central provinces 3,255 cases were transmitted between 1988 and 1990; 313 cases were reported to have occurred in these provinces since 11 June 1990; and to date, for the year 1991, approximately 40 cases have been reported to the Working Group.

97. The Working Group transmitted 821 cases for the Northern province, attributed primarily to the Sri Lankan army, for the years 1980 to 1987; 43 cases for the Northern province, reportedly the responsibility of the Indian peace-keeping forces, which were alleged to have occurred during the period 1987 to 1989; and more than 700 cases reported to have occurred since 11 June 1990 in the North-eastern province.

98. The cases submitted by Sri Lankan sources to the Working Group before and during its visit to Sri Lanka are very well documented concerning the identity and other particulars of disappeared persons and the circumstances surrounding their arrest, detention and subsequent disappearance.

99. In addition to the cases already processed by the Working Group and transmitted to the Government of Sri Lanka, a large number of cases reported in 1990 and 1991 by various reliable sources could not be processed before the Group's visit. They are currently being processed for transmission to the Government. These include approximately 7,000 cases alleged to have occurred in the Southern and Central provinces between 1988 and 1990, over 2,000 cases alleged to have occurred in the North-eastern province since 11 June 1990, and approximately 30 cases alleged to have occurred since June 1990 in the Southern province.

100. During its visit the Working Group received testimony from some 70 relatives of disappeared persons from Batticaloa, Amparai, Hambantota, Matara, Kurunegala and Colombo districts, who appeared before the Group personally. In view of the impossibility of interviewing the hundreds of family members of disappeared persons who wished to present their cases to the Working Group, the non-governmental organizations working on behalf of the relatives were requested to select a certain number of representative cases, from which individual testimony would be received. In addition, however, the

Working Group was also directly handed more than one thousand well-documented individual reports of disappearances from families of missing persons during the course of its visit.

101. During its visit, the Working Group was provided by the Government with reports of widespread killings of police and government officials in the South and Central provinces by the Janatha Vilnukthi Peramuna (JVP, People's Liberation Front), as well as of numerous reprisal killings, by this same group, of the entire families of police and civil officials.

102. The Government also provided the Working Group with reports of widespread killings and disappearances in the North-eastern province, attributed to the Liberation Tigers of Tamil Eelam (LTTE). Muslims, Sinhalese and opposition Tamil groups were said to have been the victims.

103. While in the past it was said that disappearances were not a modus operandi of LTTE (which was said to kill all those it captured), the Working Group was informed during its visit that LTTE was responsible for approximately 91 abductions, apart from the death of over 100 policemen while off duty. The Working Group also received reliable information that LTTE detention centres currently exist in the North-eastern province, where it is believed a number of missing police and military are being held in detention incommunicado. The Working Group received reports of 290 individual cases of abduction from the Muslim communities, attributed to LTTE.

104. In regard to these cases, as well as those attributed to JVP, the Working Group notes with concern the pattern of violence. However, based on its mandate, established in Commission on Human Rights resolution 20 (XXXVI), the Working Group considers only cases of disappearances in which a person is detained against his will by officials of a branch or level of government or by an organized group or private individuals allegedly acting on behalf of, or with the support, permission or acquiescence of the Government.

105. During the visit members of the Working Group received, in addition to reports of individual cases of disappearance in the Southern, Central and North-eastern provinces, reports of mass disappearances in these regions, as well as other reports and studies analysing the phenomenon of disappearances in Sri Lanka or highlighting certain elements believed to create conditions in which disappearances can take place.

A. Persons and groups affected

106. In the Southern and Central provinces, primarily young Sinhalese men were reported detained and missing, but the Working Group also received reports of numerous cases of women, aged persons, children and even infants who had disappeared after detention.

107. According to the recent cases processed by the Working Group and information received during the Working Group's visit, the missing persons in the south were engaged in many professions and belonged to all social strata, with the poorest sectors being the most affected. Farmers, agricultural workers or peasants, many of them unemployed, comprised this group; while secondary school and university students, shopkeepers or other small

businessmen, community leaders and religious persons constituted other groups widely affected. Reports were also received of large numbers of missing leaders of opposition parties acting within the framework of the political system.

108. In the Northern and North-eastern provinces, reports indicate that most of the disappeared persons were, and continue to be, young Tamil men. Here also, the disappeared persons were reported to be engaged in many professions and to belong to all social strata, with the poorest sectors being the most affected.

109. In the North-eastern province, many displaced persons of varying professions taking refuge in church and school centres have been detained and have disappeared, in some instances with their entire families. Numerous reports were reported of missing secondary school students, and community and religious leaders. Reports of missing lawyers, particularly those having taken legal action on behalf of relatives of persons who had disappeared, were also received.

B. Forces responsible

110. For the cases transmitted by the Working Group to the Government, the sources have indicated the following forces as being responsible for the disappearances: "Indian Peace Keeping Forces" in approximately 1 per cent of the cases; "armed forces" (approximately 45 per cent of the cases); "security forces" (approximately 15 per cent); "police" (approximately 11 per cent); "Special Task Force" (approximately 12 per cent); "Home guards" (approximately 1 per cent); "paramilitary groups" (12 per cent); "civil defence units/vigilante groups" (3 per cent).

111. The Working Group received information from some government officials that disappearances were also carried out in the south by "civil defence groups" which, it was said, were formed with government approval after attacks on police and government authorities by JVP made the enforcement of law and order by those authorities impossible. It was stated that the Government had provided politicians and local authorities with armed guards and the civil defence groups with training. The Government had also provided civil defence groups with approximately 6,000 weapons, and other police equipment, including vehicles. Some disappearances had allegedly taken place when these civil defence groups were said to have gone "over the mark".

107. One case reported to the Working Group was illustrative of disappearances occurring in this context. On 15 February 1991, a 24-year old man from Matara District was abducted on the road by armed personnel identified as "being associated" with a politician of Hambantota district. Family members made inquiries of the politician, who allegedly informed them that their relative was being held at the Gandara police station in Matara and would be released soon. Later, the family was reportedly informed that he was no longer at that police station, that he had been produced before the Matara magistrate's court on 2 April 1991 and had subsequently been released. When no word was heard from him, the family inquired further and was told that he had been seen at the Kada Vadduma police station two days after his alleged release, but no further information on his whereabouts was available.

113. In the north-east, while the majority of disappearances have been attributed to the the army and the police, Muslim civil defence groups known as the "Home Guard" were also said to be responsible for several disappearances. The Home Guard was reported to have come into existence to protect Muslims communities after mass killings of Muslim civilians by LTTE in August 1990, for example, the massacre of 103 Muslim worshippers at local mosques in Kattankudy. The Working Group was informed by some government officials that in response to this violence, the army had set up 18 sentry points around the Muslim communities and had trained, uniformed and armed the Home Guard to fight LTTE alongside the military, always under the military's direct control.

114. Further information provided by some government officials indicated that the military had also trained and armed "auxiliary" groups of Tamils opposed to LTTE, inter alia the Eelam People's Democratic Party (EPDP),the People's Liberation Organization of Tamil Eelam (PLOTE) and the Tamil Eelam Liberation Organisation (TELO). These groups were also said to be, in principle, under the control of the military, but the Working Group was told that they had at times "escaped control" and had been responsible for some disappearances. It was also reported that since November 1990 a non-military group called the National Guard Battalion was said to have been trained and armed by the military and to be operating in Trincomalee. Other non-military groups said to have been likewise put into operation in the north-east include the Delta Force and the Special Forces Brigade.

C. Patterns and methods of detention

115. In the light of the testimony and other information received indicating increasing numbers of persons disappearing in the north-east, the pattern now emerging in this region was reported to the Working Group as being repetitive of the pattern of mass disappearances which previously existed in the south and which still continues (in the south), but on a lesser scale.

116. Information from sources was consistent concerning the fact that most detentions leading to disappearances were carried out on the basis of the Prevention of Terrorism Act. Analysis by the Working Group of cases reported, as well as information provided by some government officials, revealed that in many cases search and round-up or "cordon" operations, conducted by the army or by combined military and police forces, sometimes accompanied by armed men in civilian clothing, resulted in large numbers of persons being detained at one time. The Working Group was told that the security forces operated on strict orders to avoid violence to civilians not involved in terrorist activity. Thus, they utilized a system of "intelligence" or "informants", particularly in cordon and search operations, to sift out those who were "under suspicion".

117. It was stated that after the initial round-up a sifting process took place in which individuals found not to be under suspicion were let go, while those under suspicion of being terrorists or subversives were further detained. The Working Group nevertheless received reports of numerous cases of mass detentions in which the persons who were not released and who subsequently disappeared included women of all ages, children and the elderly.

118. On 9 September 1990, armed soldiers and armed persons dressed in civilian clothes, allegedly ordered, under threat of death, villagers in the towns of Pillaiyaradi, Pannichaiyadi, Kokkuvilan and Saturukondan in Batticaloa district out of their houses and onto the road. They allegedly were led to the Boys Town army camp where the men were then separated from the group and reportedly killed; 166 persons, including women, children and men over 60 years of age were reported to have disappeared.

119. On 26 November 1990, in Amparai district, a family of seven persons, including several children and an infant were detained and reportedly disappeared when passing through a police checkpoint at Valathapiddy, 12 Mile Post, where an operation was taking place.

120. Many cases received indicated that the system of intelligence used throughout the detention process contributed to the problem of disappearances. The Working Group was informed that the initial identification of persons for detention was handled locally through cooperation among the police, the counter-subversive units of the local police, special intelligence units of the military and members of the civilian defence groups, as well as other civilian individuals.

121. As in the cases described above, the informant intelligence process reportedly often failed to protect civilians who would not be considered "under suspicion".

122. Cases further demonstrated that the informants used (particularly civilians) allegedly denounced persons to the security forces for reasons other than terrorist or subversive activities. In Embilipitiya, Ratnapura district, in 1989 and 1990, 31 secondary school students were abducted, allegedly by army personnel or police dressed in civilian clothing and detained at the Sevana army camp in Embilipitiya by the Sixth Artillery Unit before the artillery unit was redeployed and the camp closed down in January 1990. According to the testimony, in each of the cases, the name of the person detained was allegedly provided to the army by the same informant, the principal of a local school, and one of his sons, who has since joined the army. In each case, the alleged informant was reported to have acted for reasons of personal animosity, and in some cases to have cooperated with the request of local authorities and politicians to provide names of students to detain in order to clear out the schools of any potential JVP supporters.

123. In one such case, a student was abducted on 8 October 1989 from his home in Embilipitiya by military personnel. The father went to the principal and was informed that his son was in the Sevana camp. The officers-in-charge of the camp denied this. On 15 October 1989 the father was detained by military personnel, who said they were acting on informant information, and was taken to the Sevana camp. There, he saw his son and several other students from his son's school, three of whom he knew and could identify. All of them had allegedly been physically mistreated. The father spoke to his son on one occasion. He was himself subjected to interrogation under severe torture for over two months until he orally confessed to involvement in JVP. He was then released. The children reportedly remained in the camp and the son was not seen again.

124. Another report stated that the principal had said he was cleaning out his school as requested. In regard to the system of informants, further sources stated that thousands of young boys had been picked up on false information by security forces or groups operating with the support or acquiescence of the authorities in the south between 1987 and 1990. The group was told that often one or more youths were picked up and allegedly subjected to physical abuse. They then gave the name and address of another person who was also picked up. If the youth was in bad condition, the group was told, he would be shot, set on a tyre and burned. Sources indicate that the informant process is now being similarly operated in the north-east by security forces and regional armed civil defence groups, allegedly on information provided by other civil defence groups or individuals cooperating with the authorities.

D. Steps in the detention process

125. The Working Group was told that the detention process operates under Emergency Regulation 18, which authorizes arrests and detentions to be carried out by any police officer, any member of the army, navy or air force, or any other person authorized by the President. Under the Prevention of Terrorist Act (see paras. 55-59 above) these persons carry out detentions of "suspicious" individuals or groups.

126. Under Regulation 17, the Working Group was informed, a detention order may be issued to prevent a person from acting in a manner prejudicial to national security or public order. Under Regulation 18, the detention order may be renewed after 90 days for another period of 90 days, in fact as stipulated in Regulation 17 indefinitely, whether or not that person has acted in a prejudicial manner (see paras. 65-68 above).

127. Detentions were reported to have led to disappearances when authorities refused to inform the relatives at varying stages of the detention process. The Working Group was told that during the first 48 to 72 hours of detention, before the order of detention became necessary, families invariably approached the local police station or military camps in an attempt to locate their missing relative. In cases where the person is considered "under suspicion" (under the Prevention of Terrorism Act) and more interrogation is considered necessary, the detention is reportedly denied during this initial stage. In relation to the situation in the south, the Group was told that "this was not the right thing, but it happened".

128. In one such recent case in the south, it was reported that the police came to a family's home in Tangalle and asked that the son be taken to the police station. The following day he was released with a "friend", but four days later, on 5 June 1991, the family witnessed this friend taking him back to the police station, and stated that only the friend returned. Despite numerous inquiries during the following days, the police continued to deny the detention and refused to make a report. The whereabouts of the son have never been determined.

129. In another case reported to the Working Group, a 27-year-old man was detained in Kurunegala, in 1990, by persons recognized as police personnel. During the first days after the detention, the family inquired numerous times at the Kurunegala police station, but were told on each occasion that he had

not been detained there. The Working Group was told that subsequently the (then) five-year-old son went with the uncle to the police station where he climbed a stone wall to peer through into the police barrack. He saw his father inside the barrack, and as he continued watching, his father saw and acknowledged him, motioning that he should leave. The police continued to deny the father's custody and he has not been seen since.

130. Some families reported that when they had inquired at the local police station within the first 24 hours after detention, they were told that no one by that name had been detained. In some cases it was alleged that detained persons used an alias and therefore the families could not be informed. In several cases where the family had received a negative response in relation to their relative's name, it was reported there were eyewitnesses to the actual detention or the person had been seen in the custody of the authorities either by a local townsperson or by a released detainee. Nevertheless, the detention was still often denied by the authorities and subsequent checks of the registry files allegedly failed to disclose the missing person's whereabouts.

131. Another illustrative case was reported to the Working Group in which two farm workers were abducted on 17 July 1989 from a boutique in Welimada, Badulla district by about 10 armed persons in two vans with covered licence plates. When the father of one of them went two days later to the Luhunuwatte army camp to inquire about his son, camp authorities denied the detention. Repeated inquiries during the following days by the family failed to obtain a response. Thirteen days later, the companion was released from that camp and reportedly confirmed that the missing person was in custody at the camp. When the registry file of the camp was subsequently checked, neither the name of the missing person nor of the released person were found.

132. The Working Group was told that after 72 hours, even under emergency regulations, a decision must be taken whether or not to prolong the detention, and if it is decided to prolong detention, a detention order must then be issued. The practice of transferring the detainee at this stage was described by numerous sources as an important element contributing to disappearances.

133. The Working Group was told that the interrogation process often continued throughout the 90-day detention period, and in some cases for renewed periods of detention. If that was the case, some officials stated, the person is generally transferred to one or more locations. Sometimes, it was stated, bureaucratic difficulties, including lack of communication and "non-coordinated" work among the intelligence services and other authorities made registration and control of these transfers impossible, and thus persons disappeared when trace of them was lost by the authorities.

134. In one case reported in Dodanduwa, Galle district, police from the Hikkaduwa police station allegedly came to a family home on 24 December 1989 and took the son, saying there was a complaint against him. Until 8 February 1991, the mother was allowed to see him, but on that date she was told he had been removed to the Boosa army camp. The coordinating officer at the Boosa camp let the mother see three detainees said to have been the only ones brought from Hikkaduwa. Her son was not among them. She returned to the Hikkaduwa police station where she was told "someone" had taken her son. She remained, and allegedly saw her son being led, limping, by officials. She was

then informed by a released detainee that he had been taken out of the station for interrogation but that the authorities had said he would be brought back. That night she reportedly watched from another building, and saw her son being returned to the station with three other persons. When she inquired the following day, she was told he had been taken to Boosa. No word of the son has since been received.

135. The Working Group was told that in addition to these bureaucratic problems, the frequent "escapes" of detainees during transfers lead to what might appear to be disappearances.

136. In a case illustrative of several of these problems, a police constable of the District Intelligence Bureau (DIB) of the Badulla police, B.M.G. Basnayaka, disappeared on 11 January 1991 on his way to the National Intelligence Bureau (NIB) in Colombo. Reports indicate that he was interrogated as to links he allegedly maintained with a subversive leader. His wife was allegedly informed that he had been held at the Colombo NIB office on 14 and 15 January and that he was then transferred to the Gandara police station in Matara district. The Superintendent of Police in Matara told her that he had never been detained. Later, the family was informed that he had "escaped" from the police station at Matara.

137. During the investigation by the Presidential Commission, it was divulged that the Senior Superintendent of Police and Deputy Director of the Counter-Subversive Unit of NIB reportedly did not know who was in charge of the Counter Subversive Unit at Matara, and that Basnayake's commanding officer, the Superintendent of the Badulla police, had never been informed as to the nature of the inquiry. It was also reported that the sub-inspector of the Colombo NIB who had been charged with handing the detained person over to an assistant superintendent of police of a special branch, allegedly handed him over instead to DIB. The Working Group was further told that no entry in the log-book pertaining to the sub-inspector's trip to Matara from Colombo, allegedly to hand over Basnayake, had been recorded.

138. Another aspect of this case brought to the attention of the Working Group indicative of practices that are believed to allow for disappearances, is that NIB, like several other special divisions of the security forces, does not formally make arrests. It undertakes the interrogation of persons arrested by other forces, and as such, is reportedly not required to enter its activity into log-books nor to register the names of detainees.

139. Furthermore, as stated by some governmental officials, and as described in the above-mentioned case, the interrogation process is usually carried out at several locations, necessitating multiple transfers of the detainee. The Working Group was told that these interrogation centres are transitory, sometimes described as "outposts", and as such, although some keep partial registries, they do not require registration of persons detained in or transferred from them.

140. The following illustrative cases that occurred recently in Batticaloa District were reported to the Working Group:

141. On 23 June 1991, a 19-year-old boy, the third son in the family to disappear, was allegedly detained during a midnight round-up by combined forces in Kallahari, Batticaloa district. Upon inquiry, the family was reportedly told that he had not been detained by the army, but eyewitnesses gave a detailed account of the son being taken by governmental officials to a temporary military outpost set up in the Forestry Service in Koddammunai, Batticaloa district, known as the "Forestry Camp". Upon questioning, authorities denied having detained or having transferred the son, and he has not been seen since. Upon inspection of the detainee registry file in the camp during its visit, the Working Group failed to find the name of this missing person.

142. Disappearances were also reported to have occurred when persons were transferred from one temporary camp to another. In some cases the person was transferred when the camp was closed, on other occasions before the camp was dismantled, but, according to information received, after the dismantling, tracing the missing person through registers became impossible. The Working Group was informed that the officers-in-charge at the time of the detention or transfer were, in most cases, redeployed to different areas, and that in many cases, a restructuring of the security force units also made tracing of the units in charge at the time of the detention or transfer impossible.

143. One such case in Parakadduwa, Ratnapura district was reported to the Working Group. The parents reported that on 18 January 1990, their son went into the village where he and three other persons were allegedly detained by five army officers. The authorities allegedly refused to accept the complaint and denied that the son had been detained. When two of the four persons detained were released from the Heliagoda army camp in Ratnapura district, they informed the family that their son had been transferred two days after his detention to the Ratnapura camp and that he had been transferred three days later to the Kalavana camp. The Working Group was told that the Heliagoda and Ratnapura army camps were temporary and that Kalavana was not only temporary, but also not a formal place of detention. No registry entry of the detentions or transfers could be found, and the officers-in-charge were said to have been redeployed to different areas and reportedly could not be identified.

144. Many disappearances were reported to have occurred in the context of reprisals. In some cases, large numbers of young men in a town, region or "refugee" camp were alleged to have been detained in cordon and search operations after an armed encounter between security forces and terrorist groups or after a terrorist attack on a group or an individual belonging to the security forces.

145. Reprisals were also reportedly directed at families of disappeared persons for the purpose of intimidation. A young man was detained on 18 February 1991 by the Trincomalee police and allegedly taken to Tangalle and handed over to the Tangalle police. The mother made inquiries which led her to the Tangalle police captain. It was reported that the police demanded 10,000 rupees from her. She was allegedly beaten by the police after having given them the money. Three weeks later, her home was burnt down and on the same day she reportedly received word from townspeople that her son had been set alight on a tyre 13 miles outside of the town. By the time she arrived, the body was too burnt for her to identify it as that of her son.

146. Some persons were also said to have disappeared when the actual person searched for by the police or the military could not be found.
On 10 November 1988, the security forces allegedly fired upon persons in a procession at the Anantha Simaharama temple in Hambantota district. According to statements received by the Working Group, there had been a petition to detain a particular person for questioning, but after reportedly firing upon the temple crowd, the security forces either were not able to find this person or did not make an effort, and subsequently detained another, 28-year-old, man instead. That person was reportedly taken by police and army personnel. The family made a report to the Assistant Superintendent of Police in Hambantota who directed it to the local Government Agent, but all replies were negative.

147. From these detailed accounts, the Working Group was able to determine that while the numbers of disappearances in the south had diminished with the elimination of the JVP leadership, disappearances continued to occur in steady numbers, and in the north and north-east there has been a large increase in the number of cases reported to the Working Group. Certain elements which are believed to give rise to and permit the disappearances still exist in all regions, inter alia the continuation in force of the Emergency Regulations and of the Prevention of Terrorism Act. In the south, these continue to apply, despite what the Working Group was told amounted to the near elimination of terrorism. Furthermore, the 3,000 weapons still in circulation in the south, believed to be in the hands of civil defence personnel, were also said to contribute to the ongoing pattern of disappearances. In the north-east, the number of weapons distributed and in circulation is unknown. The continued detention under the Emergency Regulations of approximately 9,000 persons in the south was also drawn to the attention of the Working Group.

IV. NON-GOVERNMENTAL ORGANIZATIONS, GROUPS AND INDIVIDUALS

148. The members of the Working Group met members of a wide range of non-governmental organizations and community groups, and religious persons and individuals, working throughout Sri Lanka. Some of them address general questions pertaining to human rights, others concern themselves particularly with the phenomenon of disappearances, while still others are concerned with the fundamental rights and protection of specific groups or communities. The Working Group met members of the following organizations: the Sri Lanka Bar Association, INFORM, the Organisation of Families and Relatives of the Disappeared, the Union of University Teachers for Human Rights, the Civil Rights Movement of Sri Lanka, the Batticaloa Peace Committee (formerly the Citizen's Committee), the Mothers Front, Students for Human Rights, Movement for Interracial Justice and Equality (MIRJE), the Law and Trust Society, the International Center for Ethnic Studies (ICES), Lawyers for Human Rights and Development, VOICE, the Central Council of Social Services, the Federation of Mosques and Muslim Organisations, the Organisation of Lawyers for Muslims. They also met members of various religious communities and trade unions. The Working Group was told that these groups and individuals, despite the risks and difficulties involved, had been able to exist throughout the period since 1980 when disappearances began being monitored, and, to varying degrees, had been able to continue their humanitarian work. The Working Group was informed, however, that fear and insecurity still existed among some of these groups. Between 1987 and 1990, in the south, numerous human rights groups had received threats and some of their members had disappeared or had been killed.

149. In July 1988 and again early in 1991, the home of Mr. Mahinda Rajapakse, an opposition Member of Parliament and human rights worker, was damaged in anonymous attacks. The first attack occurred a few days after he had convened a meeting to condemn the proposed Indemnity Act, which provides indemnity from prosecution for government and security forces whose actions were performed in "good faith".

150. It was brought to the attention of the Working Group that in the North-eastern province, groups and individuals involved in the protection of human rights had in the last year been severely curtailed in their ability to carry out their humanitarian work and, in particular, mention was made of a Jesuit priest from Batticaloa who had disappeared in 1991.

151. In July 1990, the President of the Citizen's Committee of Kalmunai, Amparai district, Mr. S. Kanapathipillai, and his son were killed. In the same month, Mr. Jeyarajasingham, President of the Citizen's Committee of Valaichchenai, Batticaloa, was also killed. The Working Group was informed that the number of habeas corpus petitions being filed in the north-east on behalf of disappeared persons had decreased in the past year, following the deaths of four lawyers working with human rights organizations actively engaged in presenting such petitions.

152. Members of an organization called "Students for Human Rights" informed the Working Group that because they were students, they were automatically considered "under suspicion" by the authorities and had therefore been the subject of intimidation, threats, disappearances and, in many cases, killings. The Working Group was told that in 1990, a group of students from various groups comprising the organization had been selected to represent the students in talks with government officials and some members of the then newly established Governmental Commission on the Involuntary Removal of Persons and the Presidential Task Force. During the meetings, unknown persons alleged to have been linked to, or to be working with the acquiescence of, the authorities, reportedly photographed the students. It was reported that within a few months of the meetings, 8 of the 10 student participants had been killed.

153. The Working Group was also informed that on 15 December 1990 a six-member governmental commission of inquiry into non-governmental organizations, headed by the former senior Supreme Court judge, R.S. Wanasundera, had been established to look into the activites and funding of both local and foreign non-governmental organizations operating in Sri Lanka at present, the provisions of law promulgated for monitoring and regulating the activities and funding of such organizations, and whether any of the funds received from foreign sources had been misappropriated or were being used for activities prejudicial to the State.

154. An independent group of experts sent by the International Commission of Jurists carried out a mission to Sri Lanka from 30 May to 6 June 1991 for the purpose of investigating the activities of the above-mentioned commission and its ramifications. The conclusions of this study, as well as other sources of information, indicate that, whereas it is accepted that there is a need for some kind of monitoring of existing non-governmental organizations in Sri Lanka and of their funding procedures and other activities, this

monitoring should not have a "chilling effect" on the activities of these groups by being overly intrusive and prohibitory of their humanitarian and human rights activities, and should not threaten directly or implicitly, any members of these groups for carrying out their activities.

155. The Working Group was informed by a spokesman of the "Sarvodaya" that during the past year this religious organization had been singled out for harassment and threats and that more recently the activities of several Catholic organizations had been investigated and their members intimidated, and in some cases threatened.

156. Sri Lanka's experience in organized efforts to protect human rights has a relatively short history of 20 years. The formation of the Civil Rights Movement in 1971, largely in response to the first armed revolt by JVP and its violent suppression by government forces, marked the first step towards systematic and organized human rights work. In the 1980s, the scope of human rights concerns came to be widened in the context of the violent political conflicts and new human rights bodies emerged to work in diverse areas of civil, democratic and political rights. "Citizens committees" primarily concerned themselves with liaison work between citizens and the State and military authorities on the broad range of problems that arose as a result of military operations. Nowadays, several committees, scared to take up the issue of human rights, continue to take complaints but no longer actively pursue them with the local authorities. Several members of citizens' committees (important providers of information to the Working Group as well) have been killed or have disappeared.

V. INFORMATION AND VIEWS PROVIDED BY GOVERNMENT OFFICIALS

157. As mentioned in paragraph 3 above, three members of the Working Group had occasion to meet senior government officials of Sri Lanka, who expressed their views frankly on the human rights situation in the country and provided important information which contributed to the understanding of the various contextual and institutional aspects of the phenomenon of disappearances.

158. Some of the major points conveyed to the members of the Working Group are reflected in other parts of this report, particularly in the section devoted to institutional and legal information, where the explanations provided by the authorities on Sri Lankan legislation and institutions complete the legal texts and the information received from other sources. This is also true for the information obtained from military or police authorities regarding the organization and functions of the law enforcement agencies and the armed forces.

159. The members of the Working Group were honoured with an audience with the President of the Republic, Mr. R. Premadasa, for which the Group wishes to express its deep appreciation. The President stressed the fact that he headed a democratically elected Government and that the opposition had ample opportunity to express itself through several political parties which were represented in the Parliament and encountered no obstacles to their political activities. The President regretted that violence had disrupted the democratic electoral process in the southern part of the country in past years, and currently in the north. He mentioned that the groups responsible

for such violence were trying to destroy democracy, and that the Sri Lankan people were ready to oppose them, even at great risk, as they had already done by confronting fearlessly the violence unleashed by JVP groups in the south.

160. In the following paragraphs the main points relevant to the Working Group's mandate that were discussed with the senior governmental officials are outlined.

A. The question of violence

161. Several officials stated that the country had gone through a very difficult situation in the period 1988-1990, during which armed groups were active in the south. Those groups were headed mainly by people who had graduated from higher educational institutions and were unemployed and, therefore, resented the lack of suitable employment opportunities for their level of education. However, owing to the low level of economic development, university graduates could not be sufficiently absorbed into the labour force.

162. During the years 1988 and 1989 there had been a near "war situation" in some parts of the south, with subversives launching frequent armed attacks against law enforcement officers and members of their families. Hundreds of persons had been killed during those attacks, which had seriously aggravated the tension. Because of that situation, the authorities had been unable to maintain law and order. The Government had consequently approved the formation of civil defence groups, providing them with 6,000 weapons and other material, such as vehicles and police equipment. Unfortunately, during the chaos some of the groups had gone "over the mark" (out of control). It was mentioned, however, that the civil defence "auxiliary" groups existing at present were under the complete control of the official forces. The Government had taken steps to remedy the violence, inter alia by reducing by 50 per cent the number of bodyguards protecting politicians and by recalling the weapons handed over to political groups for their defence in the south. Of the 6,000 weapons distributed, it was said that 3,000 had been recovered, but that the rest remained in circulation.

163. It was explained to the Working Group that the war in the north and east of the country was different from that in the south. In the south, the subversive groups did not have sophisticated arms and they operated "guerrilla style" in small groups. In the north, the Tamil group LTTE was in control of part of Sri Lankan territory. In the north and east, LTTE was equipped with sophisticated arms and was forcibly recruiting people into its army. It was also explained that LTTE had killed many law enforcement officials, particularly by attacking police stations.

164. The Government had trained and armed some "auxiliary" groups of Tamils who opposed LTTE to work with the armed forces. They, too, had at times escaped control, but they were essentially under the control of the military. Muslim groups had also been trained to fight alongside the armed forces.

165. Military officials stated that the "intelligence" system had been improved to sift out civilians who were involved in terrorist activities, particularly through cordon and search operations, during which the inhabitants of a village were rounded up, anyone involved in terrorist

activities screened out and the remaining villagers allowed to go. That system had been made possible by people coming forward with information. It was mentioned that many lawyers funded by human rights organizations had worked on behalf of the terrorists; nobody had been killed for filing a large number of habeas corpus petitions or for having taken up human rights cases. In the case of lawyer Wijedosa Liyanarstchi (a lawyer who was tortured and died while in custody), the Supreme Court had made a number of strictures based on the information obtained during the investigation, but the officials involved had not been suspended because the strictures did not imply a judgement on their responsibility. The Court had added that if the Attorney-General found further evidence, investigation of the case would continue.

166. The number of criminal cases filed against the members of the armed forces and the police had increased considerably between 1988 and 1991. A list of such cases was handed to the Working Group as evidence that some offences had been investigated and those found responsible tried.

B. The question of disappearances

167. Some of the government officials met in Sri Lanka by the members of the Working Group stated that many of the "disappeared" could have died in armed confrontations with law enforcement forces and their bodies could have been removed by their colleagues after the incidents. In such instances, there was no record of their death. Subversives had not operated in their home areas, but in other areas and under assumed names. Hence, when their bodies were recovered it was not possible to establish their identity and the relatives of the deceased would be unable to determine the whereabouts and the fate of such persons.

168. It was said that some of the missing persons might be suspected offenders evading arrest who had got their relatives to complain that they were missing. Many of the complaints were politically motivated and intended to discredit the Government. In addition, many persons had sought refuge, mainly for economic reasons, in Western countries, using false names and forged travel documents. It was not possible to ascertain the correct identity of such persons and there was every possibility that they had, for convenience, been reported missing by their relatives. Even with regard to the persons who had left Sri Lanka using their correct identity, the Government was unable to obtain their names from tne countries giving refuge in order to check such names against those on the "missing persons" list.

169. Other government officials admitted that the President had received thousands of petitions relating to cases of disappearance (which were referred to the Attorney-General) but most of them had never been clarified because the units or groups of the armed forces or the police concerned had been transferred. The officials indicated that members of subversive groups usually assumed or were registered under false names, so that they could not be identified when relatives visited police stations to make inquiries regarding their whereabouts during the first days of detention.

170. It was also stated that during the subsequent period of investigation (90 days according to Regulation 18 of the Emergency

(Miscellaneous Provisions and Powers) Regulations), persons detained were generally transferred to one or more different locations. Some of them had disappeared and their transfers could not be traced for bureaucratic reasons; some were said to have escaped during transfer.

171. Many of the disappearances that had occurred in the south were due to action taken by political leaders, local authorities or "vigilante" groups which escaped government control. The officials condemned any kind of illegal detention, but they agreed that some disappearances might have occurred as reprisals for attacks of which family members of the police had been the victims. However, when members of the police or the armed forces had been accused of abuses or serious offences, their cases had been handled by civil courts, and many of them were on trial.

C. The question of Regulation 55 FF (disposal of dead bodies)

172. The officials maintained that this regulation had been justified because during the years it had been in force, the armed forces and the police had been facing a "war situation" and they had had to act accordingly. At that time no judge would have gone for an inquest to a place in which a death occurred, because of the risk involved. Consequently, the police had disposed of bodies in the interest of public health. Bodies had sometimes been burnt or buried without prior identification, especially in cases in which relatives would not go to inquire about the person concerned. Names had been registered if they were known. However, in many cases, identification had been impossible, because members of terrorist groups operated in areas which were not those of their domicile. In addition, a system of identification of persons by their fingerprints was not used in Sri Lanka.

173. It was also stated that the practice of disposing of bodies without an inquest belonged to the past, since that regulation had been repealed. After the appointment of the Commission of Inquiry into Involuntary Removal of Persons, very few such cases had occurred.

D. The question of detainees in Sri Lanka and the possibility that some missing persons are among them

174. This question was put by members of the Working Group to several officials. They were informed that the number of detainees in detention camps under Regulation 17.1 of the Emergency Regulations was approximately 4,000, while the number of persons in the custody of the police under Regulation 19.2 of the Emergency Regulations was between 740 and 1,000. In addition, about 4,000 detainees were being held in rehabilitation camps under the Emergency Regulations. The names and identity of those persons were duly recorded and the Human Rights Task Force had undertaken visits to all detention camps in order to prepare accurate records of names, which in the future would be computerized (see para. 87 above).

175. The Commission of Inquiry into Involuntary Removal of Persons had succeeded in finding the names of a few persons reported as "disappeared" in the detention centres visited by it (see para. 89 above).

E. The question of measures taken by the Government to stop disappearances

176. The Human Rights Task Force had made several recommendations to the Government with a view to minimizing the possibility of the abduction and murder of civilians. Among the recommendations implemented by the Government were: (a) reduction of the numbers of security personnel assigned to Ministers, Members of Parliament and others, with a view to minimizing the possibility that such security personnel would engage in unlawful activity for private profit; (b) the issuance of instructions to all officers in charge of police stations that they would be held personally responsible for any dead bodies found in public places within their jurisdiction; (c) reduction of the number of weapons issued to the bodyguards of Ministers, Members of Parliament, etc.; (d) the establishment of the Human Rights Task Force to collect information on persons in custody and to provide for their welfare; (e) the inclusion of a provision in the Emergency Regulations requiring a magistrate to visit all detention camps located within his jurisdiction; and (f) the establishment of the Commission on Involuntary Removal of Persons. The mandate of that Commission was to inquire into the dissapearance of persons who were alleged missing on or after 11 January 1991. This was because the Government felt that first priority should be to attempt to bring to a halt any illegal activity leading to disappearances, and the existence of such a commission would deter such illegal acts. When the allegations of disappearances became fewer, the Government might consider extending that mandate to previous periods, in stages.

177. The Government had also enacted new legislation on presumption of death. Under section 108 of the Evidence Ordinance a person had been presumed to be dead if his whereabouts were not known for a period of seven years. That provision had been amended by Act No. 10 of 1988, reducing the period to one year. A relative wishing to proceed on the basis that a missing person was dead, could therefore rely on that provision of the law to establish that that the person concerned was dead.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

178. The Working Group's visit to Sri Lanka at the invitation of the Government, was very productive in terms of effective use of time and as regards the copious amounts of information assembled on the different aspects of the problem. This was due first of all to the large measure of cooperation extended to the Working Group by the Government of Sri Lanka. Furthermore, many human rights groups and other non-governmental organizations, as well as private individuals, greatly facilitated the completion of its task.

179. The Special Rapporteur on summary and arbitrary executions had similarly been invited by the Government, but the visit did not take place owing to circumstances unrelated to Sri Lanka. This year, many foreign human rights groups have been allowed to come to the island, demonstrating the openness of the country's authorities. In particular, the presence of the International Committee of the Red Cross (ICRC) was welcomed as a positive step on the part of the Government and a sign of its commitment to international law.

180. The political system of Sri Lanka is a parliamentary democracy, whose tradition since independence goes back to the Soulbury Constitution of 1948. Democratic ideas seem firmly embedded in society. For 20 years, there have been organized efforts to protect human rights in the country, starting with the formation of the Civil Rights Movement in 1971. The present Constitution contains the most important of these basic rights. Sri Lanka is a party to the major international human rights and humanitarian instruments, including the International Covenants and the Geneva Conventions.

181. Professedly a peace-loving nation, guided in large part by the pacifist teachings of Buddhism, the people of Sri Lanka have nevertheless witnessed outbreaks of violence, sometimes extreme, ever since the 1950s: internecine strife among members of different ethnic communities; violence of militant groups; and violent suppression of revolt by security forces.

182. Furthermore, the process of development and the expectations of a population which has recently achieved a literacy rate surpassed in Asia only by Japan and the Republic of Korea, has called into question many of the basic values of traditional Sri Lankan society. A heavily mortgaged economy, high unemployment, especially among youths and rural workers, increasing poverty, and the breakdown of political processes, have obviously all had an extremely detrimental effect.

183. The context in which the phenomenon of disappearances has materialized in Sri Lanka largely arises from two major sources of conflict: first and foremost, the confrontation of Tamil separatist militants and government forces in the north and north-east of the country; secondly, the confrontation between the People's Liberation Front (JVP) and government forces in the south. Both confrontations have a political and a socio-economic background.

184. Both conflicts have produced violence, by the Liberation Tamil Tigers of Eelam (LTTE) in the north and north-east and by JVP in the south. In the south, JVP resorted to violence and terrorism against members of the ruling party. It extended its terrorism not only to the security forces (both military and police), but also to the families of these authorities. In the north and north-east, the Tamil Tigers have also used violence for the purpose of instilling terror in the civilian population. These armed conflicts have caused serious damage to the economic infrastructure of the country.

185. A State has the right to use force, but in modern times it is universally agreed that its use is not without limits. It is subject to non-derogable legal norms, such as the ones regarding the right to life and security of the person, laid down in the International Covenant on Civil and Political Rights and the Geneva Conventions and Protocols. Disappearances and other violations of human rights most frequently occur in situations of generalized violence and excessive and undirected use of force. In the Sri Lankan context, observers of events in the country tend to agree that, in view of the situation that eventually developed, the use of State force <u>per se</u>, both against LTTE and against JVP, did not contradict international legal norms. However, in the course of that use of force, human rights violations have been committed, particularly as regards non-combatant civilians. Most of these

violations (arbitrary executions, torture) lie outside the Working Group's mandate (see chapter I). The fact remains that the Group has recorded up to 12,000 cases of disappearance between 1983 and the present.

186. It should be pointed out that this figure does not include abductions by non-governmental forces, such as LTTE and JVP. Under the present description of a disappearance (now in the process of being elaborated into an international legal norm) the case has to involve a person who is arrested or detained, against his will, by officials of any branch or level of government or by an organized group or private individuals allegedly acting on behalf of, or with the support, permission or acquiescence of the Government. In accordance with its methods of work, the Working Group entertains cases of disappearance only when it is informed that government forces have somehow been involved.

187. The Working Group wishes to emphasize that the cases of disappearance alleged to have occurred in Sri Lanka rank as the best documented cases among those from the 40-odd countries appearing in the Group's annual reports to the Commission on Human Rights. The information given in each case of disappearance in Sri Lanka not only contains the basic necessary elements, but often details such as the names of arresting officers, places of detention or licence numbers of the transport vehicles used.

188. The Government maintains that many people reported disappeared have actually fled the country (see chapter V). The Working Group is not in a position to verify this, but in view of the highly specific and reliable information available on each case the Group has registered, that explanation would not seem to be applicable to most of these cases. The flight explanation may apply to persons who, following their arrest and subsequent release or escape from custody, have either not kept in touch with their families or whose families have not taken the trouble to notify the Working Group through the recipient of the original complaint. The Group, as stated above, has at present no information to suggest that there are many cases of this kind.

189. The Government, in many cases, has replied that the person in question has escaped or has been released. Again, this may be true in some instances. In one case, however, a person listed as disappeared was witnessed dying in a police cell by a fellow detainee. Subsequently, his cell was marked "released". Testimony such as this dictates a certain prudence in accepting explanations of release or escape at face value. In any event, under the Working Group's methods of work, escape and release cases are taken up directly with the relatives of the disappeared, who must verify the response of the Government.

190. The Government has stated that in many cases the missing person used an alias at the time of detention and that, for this reason, families inquiring about their missing relative and submitting the real name could not be properly informed. This may well be true. The Working Group, however, received numerous cases in which families inquiring during the first 72 hours after the arrest were denied access to the local places of detention to identify their relative by sight. In addition, registers often failed to record the names, be they real names or aliases, of persons known to have been in detention.

191. The Working Group would like to add that, in some cases, ICRC may have notified the family of the fate or whereabouts of a missing person who also appears on the Group's files. The family, once informed, would not necessarily take the trouble of referring back to the Working Group through the original channel of communication.

192. The overall number of cases, therefore, may in reality be somewhat less than that reported to the Working Group: precisely how much cannot be estimated. The remaining figure is still substantial and by far the highest number ever recorded by the Working Group for any single country. In addition, it should be stressed that the Working Group cannot be sure of having recorded all the cases said to have occurred in the country. On the contrary, testimony seems to suggest there are many more. Furthermore, the Group has not yet been able to process all the cases it has received, and new denunciations relating to the last few years are still flowing in. Lastly, the incidence of disappearances in Sri Lanka may have decreased, but is not negligible at present. The Group has so far received over 1,000 cases alleged to have occurred in 1991, 40 from the south, the others from the north-east. It is believed that a small number of these missing persons may still turn out to be detained in detention camps housing suspects under the state of emergency. Hope also remains for some of the missing persons who were transferred to Colombo. Tracing is difficult, despite persistent efforts by ICRC, in view of the limited resources put at the disposal of the governmental Task Force on Human Rights (see chapter II). Tracing has been an ongoing problem, particularly in cases of frequent transfers of suspects from one place of detention to another, ultimately leading to disappearance. Also, despite an extensive detention registry system in the country, many reports indicate that, frequently, registration requirements were purposely disregarded.

193. On the basis of the material available, the Working Group concludes that both in the north and in the south, the army, and predominantly the police in the south, have been involved in disappearances. Death squads, which given the circumstances could only have operated with the acquiescence of government forces (see para. 31 above), have been involved as well. Also implicated were civil defence units, armed and trained by the army.

194. The next question is what factors have facilitated the practice of disappearance. Attention is drawn to the security legislation of Sri Lanka, which seems to have contributed appreciably to the phenomenon. Notably, the Prevention of Terrorism Act, permanent since 1982, provided the authorities charged with counter-insurgency operations with wide latitude for action. The Act allows a person suspected of a crime against the security of the State to be arrested preventively and "to be kept in custody of any authority, in such place and subject to such conditions as determined" by the Minister of Defence (not the Minister of Justice). Experience in many countries shows that when persons are removed from the custody of trained civilian prison officers and handed over into military custody, abuses are likely to result.

195. Similarly, legislation promulgated under the state of emergency, in force since 1982 with few interruptions, seems to have a bearing on the incidence of disappearances. Chapter II contains a description of how powers of arrest are being exercised by a wide circle of law enforcement agents, including military

personnel and vigilante groups. In addition, there is little doubt that Emergency Regulation 55 FF, of July 1988, has been conducive to uncontrolled activity by the armed forces. It permitted the disposal of dead bodies without post-mortem inquest, certification or even confirmation of identity, a measure essentially copied from a similar one in force for a short time in 1983. Even though Regulation 55 FF was repealed in February 1990, Emergency Regulation 55 A to F is still in place and dispense with many crucial rules of criminal procedure, such as judicial inquest in cases of death in custody.

196. The Working Group has also had occasion in the past to state that when a large group of people can arrest and detain a large group of other people on the basis of mere suspicion of offences that are not sufficiently circumscribed, dispensing with almost all of the normal due process guarantees, disappearances are bound to occur. Coupled with the possibility, under the law, of disposing of bodies without formalities, abuses become almost inevitable.

197. As a matter of public record, the Government considered that, since it was at war with JVP terrorists, all counter-insurgency methods were legitimate. It was publicly indicated that troops were not afterwards going to be questioned about how they had achieved their tactical and strategic objectives.

198. The public avowal by the late Minister for National Defence that the same strategy was going to be applied in the north against LTTE, as had been used against JVP in the south, should be a matter of concern. Early signs, such as the appearance of death squads in the north, are sufficiently ominous for the United Nations Commission on Human Rights to remain alert to further deterioration of the observance of basic rights in that particular area of the country.

199. The combination of the above factors appears to have stimulated a sense of impunity among the armed forces, fuelling disregard for basic human rights standards which they would have ordinarily tried to respect and observe. The sense of impunity was further stimulated, although not entirely warranted from a legal point of view, by the Indemnity Act covering the period 1977-1988 (see chapter II). As the Government pointed out to the Working Group, the Act was not intended to provide blanket immunity for members of the security forces who did not respect the rule of law; rather, it stated, indemnity should be applied when acts are carried out in good faith and in the execution of duty. The Working Group was presented with an impressive number of criminal cases pending against members of the security forces for offences ranging from murder to bigamy. The fact remains, however, that for grave violations of human rights, committed in the course of counter-insurgency operations, no convictions have been brought to the attention of the Working Group to date.

200. In response to reports of human rights violations, including disappearances, the Working Group acknowledges that the Government has demonstrated good will and extended full cooperation to it and to other United Nations representatives. The Government has also instituted a variety of investigations into particular incidents. Other forms of action include the setting up of civilian information centres and mobile legal offices.

201. In addition, over the last few years, the Government has created an array of commissions and task forces to deal with various aspects of the problem. It is not certain, however, whether all of these have the necessary powers and resources and whether at present they draw maximum advantage from the terms of reference provided to them. The Presidential Commission of Inquiry into Involuntary Removal of Persons, for example, is composed of senior retired judges. The Commission is restricted by the fact that it can only consider cases that have occurred after 11 January 1991. Compounding its predicament are the methods of work adopted, described by the Commission itself as "quasi-judicial". The process involves prosecuting and defence attorneys, written and oral arguments and public hearing of witnesses. After this lengthy process, the Commission may make a recommendation to the President to refer the case to the regular court system. If the President decides to follow the Commission's recommendation, the entire process must be repeated under the Code of Criminal Procedure.

202. The habeas corpus procedure in principle the most powerful tool available to complainants on disappearances is marred in Sri Lanka by the same deficiencies the Working Group has observed in other countries. Writs of habeas corpus can only be filed in the capital city, Colombo. Even for those who can travel the distance and avail themselves of legal counsel, results are on the whole disappointing. Usually, even if a writ is referred to a local magistrate by the Court of Appeals, a flat denial of any knowledge on the part of the security forces terminates the procedure. A magistrate is not empowered to conduct any investigation in situ, for example by seeking access to places of detention.

203. The human rights community in Sri Lanka has reported harassment, threats and attacks. The Working Group was impressed with the courage and stamina they have displayed in pursuing their goals. Many members of local or national non-governmental organizations have disappeared or died in the course of the conflict in the north and south and many live in fear of reprisal even today. The Bar Association and legal aid societies cope with similar problems. In December, many non-governmental organizations came under cross-fire following the establishment of the Presidential Commission of Inquiry in respect of Non-Governmental Organizations. The Commission conducts public inquiries into non-governmental organizations activities over the past 10 years. According to a report of the International Commission of Jurists, it appears to have done so in a manner increasing the fear and nervousness of non-governmental organizations in carrying out humanitarian activities.

B. Recommendations

204. Finally, in the light of the above conclusions, the Working Group submits the following recommendations for consideration by the Government of Sri Lanka:

(a) The Government should take more effective measures to prevent disappearances.

(b) In view of the magnitude of the problem of disappearances in Sri Lanka, the Government should encourage more official condemnation of this practice and give greater publicity to such condemnation.

(c) The Government should pursue the clarification of disappearances even more vigorously. The setting up of various bodies has been an important step in this direction, but is not sufficient (see recommendations (j) and (k)). Human rights groups should be brought more closely into the search for missing persons, specifically as regards the identification of bodies discovered. In such identification, assistance might also be requested from an international team of forensic experts under United Nations auspices.

(d) In order to facilitate the search for missing persons, all government authorities in charge of temporary or permanent places of detention (such as army or police headquarters, barracks, camps, outposts, prisons) should be required to provide to the competent civilian authorities periodically updated listings of detainees under their custody. Registers of detention should preferably be kept in the office of the chief civil authority of a district. The latter should be empowered to visit at any moment any place of detention in the district in order to verify the data supplied to him, and should be required to report at regular intervals to the competent civil authorities in Colombo. The latter, for example the Attorney-General's Office, should maintain a central register of detention, supplied with information by the respective district authorities. Civil authorities in the capital should be empowered to make spot-checks on places of detention. Adequate provision should be made for registration of transfers of detainees from one place of detention to another. Both the central and district detention registers should be accessible to interested parties, including non-governmental organizations and especially the press. Lists of detainees under the state of emergency should be kept up to date and regularly published. If scrupulously applied, these measures could have a strong preventive effect.

(e) The Prevention of Terrorism Act, the Emergency Regulations currently in force, as well as other pertinent parts of the present legislation, should be brought into line with accepted international standards regarding due process and the treatment of prisoners. Grounds for and powers of arrest, as well as grounds for the transfer of detainees, should be clearly circumscribed. Time limits for bringing a person before a judge following his arrest should be drastically shortened, as the present time limits appear excessive.

(f) The Government should initiate a thorough overhaul of both the law and the practice of habeas corpus in order to expedite the present procedure and make it more easily accessible and generally more effective. In particular, petitioners for habeas corpus should be enabled to initiate the process within their district of residence, through the district magistrate. The magistrate should forward the petition to the competent court. Such a magistrate should be empowered by the competent court to enter, at his discretion, all places of detention with regard to a given petition.

(g) The Government should prosecute more rigorously those responsible for disappearances and require that severe disciplinary punishment be meted out to government officials who have failed to take adequate measures to prevent disappearances. In particular, the Group finds it necessary to

emphasize that disregard for the requirements on registration of detainees should be severely dealt with, as well as acts of intimidation or reprisal against witnesses and relatives of disappeared persons.

(h) Acts found to involve grave violations of human rights, such as disappearances, should not benefit from indemnity legislation.

(i) Human rights records of members of the armed forces and the police should be taken into account in the consideration of promotions (a practice stated to exist in other countries of the region). Members of these forces under investigation for involvement in cases of disappearance should be suspended from active duty until inquiries are completed. The introduction of training courses on human rights and humanitarian law for army and police personnel, such as have been introduced in several other countries, should be considered.

(j) The Commission on the Removal of Persons, as well as the Human Rights Task Force, should be empowered to make spot-checks on any place of detention. Both bodies should be authorized to follow up reports received of clandestine places of detention. They should also be given more resources in order to discharge their mandates effectively.

(k) The Commission's mandate should be extended beyond January 1992 and the time limit should be removed to allow consideration of cases prior to 11 January 1991. In order for the Commission to cope with the resulting case load, a thorough review of its working methods should be undertaken. Instead of a time-consuming "quasi-judicial" process, the Commission might be encouraged to employ summary procedures which would expedite the consideration of cases. According to an alternative model, the Commission would merely try and establish whether there is a prima facie case of (involvement in) a disappearance, and if so, hand over the case to the civil administration of justice for prosecution and adjudication. The Commission should be encouraged to keep track of the whereabouts of a missing person once he has been located in detention. All subsequent transfers and releases should be registered. Also, the Commission should be requested to give more publicity to its findings in each case it has brought to a conclusion.

(l) Legal counsel assigned by the Commission or by the Sri Lanka Bar Association should be empowered to inspect police records.

(m) Civil defence units should only be formed on a purely voluntary basis, under the control of civil authorities. They should come under stricter control in terms of command structure, operations and supply of arms and ammunition. Care should be taken that only properly trained personnel in uniform are allowed to carry officially issued arms and use official vehicles in carrying out operations. This may prevent the present practice of civilian defence units in plain clothes arresting people at will, a practice about which the Working Group has received many complaints as having led to abuse.

(n) The Government should take more effective measures to protect witnesses and relatives of disappeared persons against any form of intimidation or reprisal and to prevent such incidents.

ANNEX

CASES TRANSMITTED TO THE GOVERNMENT OF SRI LANKA FOR THE PERIOD 1980-1990